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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 24th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Monday, 6 July 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1 and Corr.1; A/CONF.183/C.1/L.45 and Corr.1, L.47; A/CONF.183/C.1/WGGP/L.4/Add.2 and Corr.1; A/CONF.183/C.1/WGP/L.14 and Corr.1; A/CONF.183/C.1/WGPM/L.2/Add.2)

Parts 5, 6 and 8 of the draft Statute

1. **Ms. FERNANDEZ de GURMENDI** (Argentina), Coordinator of the Working Group on Procedural Matters, introducing the Group's report (A/CONF.183/C.1/WGPM/L.2/Add.2), said good progress had been made on the articles left pending. She listed the provisions of articles 54 *bis*, 61, 64, 66, 67, 74, 80 and 81 which were being submitted to the Committee for consideration, pointing out that subparagraph (c) of paragraph 1 of article 80 had been deleted. She drew the Committee's attention to the fact that in the title of article 80, the word "judgement" should be replaced by "decision", and a footnote added, reading: "The Working Group notes that the term 'decision' or 'sentence', as appropriate, should be used consistently throughout Part 8, rather than the term 'judgement'." The title of article 81 should read: "Appeal against other decisions".

2. **The CHAIRMAN** said that, if he heard no objection, he would take it that the Committee wished to refer the provisions contained in the report of the Working Group, as orally amended, to the Drafting Committee.

3. *It was so decided.*

Part 3 of the draft Statute (*continued*)

4. **Mr. SALAND** (Sweden), Coordinator of the Working Group on General Principles of Criminal Law, introducing the Group's report (A/CONF.183/C.1/WGGP/L.4/Add.2 and Corr.1), said it would be seen from Corrigendum 1 that no text of paragraphs 5 and 6 of article 23 had yet been agreed. Paragraph 1 (c) of article 31, concerning self-defence as a ground for excluding criminal responsibility, was also still pending. However, he was pleased to say that article 32 had been adopted. He drew attention to footnote 8 (to become footnote 1 in the amended document), which explained the understanding which had enabled some delegations to go along with that decision.

5. **The CHAIRMAN** said that, if he heard no objection, he would take it that the Committee agreed to refer article 32 to the Drafting Committee.

6. *It was so decided.*

Part 4 of the draft Statute

7. **Mr. RWELAMIRA** (South Africa), Coordinator of the Working Group on the Composition and Administration of the Court, introducing the Group's report (A/CONF.183/C.1/L.45 and Corr.1), pointed out that the text of paragraph 2 of article 40, presented therein, was in fact still pending. He drew attention to footnote 3 to article 43, paragraph 1, which indicated that the language ultimately adopted would reflect the outcome of

discussions on article 12. Concerning article 44, paragraph 4, he drew attention to footnote 8, which indicated that the language of the paragraph would have to be aligned with that of article 68, paragraph 5.

8. As could be seen from Corrigendum 1, article 45, paragraph 4, was in fact still pending. Other provisions that required further consultations before they could be submitted to the Committee for adoption were article 37, paragraphs 1, 3 (b), 4, 4 *bis* and 7; article 40, paragraph 1; article 49, paragraph 1; and article 52, paragraphs 1 and 3.

9. **Ms. BAYKAL** (Turkey), referring to article 45, paragraph 4, on gratis personnel, pointed out that footnote 9 did not reflect the view of her delegation, shared by a number of other delegations, that the bracketed paragraph should be deleted.

10. **Mr. RWELAMIRA** (South Africa), Coordinator, said it was because considerable support had also been expressed for the retention of that paragraph that it had been decided to leave it pending until further consultations had been held.

11. **Ms. SHAHEN** (Libyan Arab Jamahiriya), referring to the penultimate sentence of article 43, paragraph 2, said her delegation would have preferred the words "[and represent different legal systems]" to have been retained.

12. **Mr. ROBINSON** (Jamaica) drew attention to article 52, paragraph 4, which required that the Rules of Procedure and Evidence should be consistent with the Statute. During the informal consultations, his delegation had raised the question of whether such a provision would not invite challenges to the Court alleging *ultra vires*. As he understood it, the intention had been to indicate that in the event of a conflict between the Rules and the Statute, the Statute would prevail.

13. **Mr. RWELAMIRA** (South Africa), Coordinator, said it was his recollection that that point had been raised in connection with paragraph 1 of article 52. That provision too had been left pending, with a view to finding an acceptable formulation which would take care of Jamaica's concern.

14. **Mr. PEREZ OTERMIN** (Uruguay), referring to article 37 on the qualification of judges, noted that paragraph 3 (c) required every candidate to "possess an excellent knowledge of and be fluent in" at least one of the working languages. That seemed an unduly stringent requirement: he considered it would be sufficient to require "some knowledge" of one of the working languages.

15. **Mr. RWELAMIRA** (South Africa), Coordinator, said there had been general consensus that that requirement should be included. However, if the representative of Uruguay wished to pursue that point, it could be discussed by the Committee of the Whole. In response to the question raised by the representative of the Libyan Arab Jamahiriya, he explained that it had been felt that the most realistic solution would be to require that the Prosecutor and Deputy Prosecutors should be of different nationalities.

16. **Mr. CHUKRI** (Syrian Arab Republic) pointed out that nationalities and legal systems were not synonymous. He would prefer the wording "[and represent different legal systems]" to be retained.

17. **The CHAIRMAN** proposed that, in order to save time, the report of the Working Group, as orally amended, should be referred to the Drafting Committee with article 43, paragraph 2, left pending.

18. *It was so decided.*

Part 11 of the draft Statute (*continued*)

19. **Mr. RAMA RAO** (India), Coordinator for Part 11, introducing his report (A/CONF.183/C.1/L.47), said that it concerned only one article, article 102. Outlining the various decisions taken, he said that paragraph 3 (a) now provided for two vice-presidents of the Assembly instead of one. In paragraph 3 (b) the words "as far as possible" should be deleted. In paragraph 4, the first of the two bracketed phrases had been deleted and the second retained without the square brackets. For the third sentence of paragraph 5, a compromise solution had been reached whereby decisions on matters of substance had to be approved by a two-thirds majority of those present and voting, with a quorum of an absolute majority of States parties. It had been decided to delete the square brackets enclosing paragraph 6 as a whole, and to specify a period of two full years.

20. Paragraph 8, which had not existed in the earlier version, reflected a proposal by Spain concerning official languages, which had received general support in the informal consultations.

21. **Mr. YAÑEZ-BARNUEVO** (Spain) said his delegation did not object to the referral of article 102 to the Drafting Committee, but would appreciate clarification concerning paragraph 5. Did the formula chosen imply that the two-thirds majority of those present and voting had also to constitute an absolute majority of States parties? He also wished to know whether the words "except as otherwise provided in the Statute" referred back to the particular issue of the quorum for voting, or, as was his understanding, to the broader issue of adoption of decisions on matters of substance.

22. **Mr. RAMA RAO** (India), Coordinator, said that the understanding of the representative of Spain was correct regarding the second point.

23. **Mr. van BOVEN** (Netherlands), noting that a footnote had been added to paragraph 2 (d) to the effect that the paragraph was without prejudice to the final decision on article 104, said that a footnote to the same effect should perhaps be added to paragraph 6.

24. **Mr. CHUKRI** (Syrian Arab Republic) noted that no mention was made in paragraph 5 of the majority required for approval of decisions on non-substantive or procedural matters. That issue should also be addressed.

25. **Mr. PFIRTER** (Switzerland) endorsed the views expressed by Spain regarding the need for clarification of paragraph 5. It should be made clear whether the quorum specified was a quorum for adoption of decisions on matters of substance, or simply one required for proceeding to a vote.

26. **Mr. BOUGUETAIA** (Algeria) said that since paragraph 5 dealt with the fundamental issue of the procedure for making decisions on substantive matters, it was important to be precise, and that he therefore fully endorsed the requests for clarification just made. Did the provision require a two-thirds majority of the absolute majority specified in the proviso?

27. **Mr. KROKHMAL** (Ukraine) supported the views expressed by the representative of Spain concerning paragraph 5, and by the representative of the Netherlands concerning paragraph 6.

28. **Mr. RAMA RAO** (India), Coordinator, in reply to the point raised by the representative of the Netherlands, said it had been decided to add the footnote to paragraph 2 (d) in order not to prejudge the question of what kind of funding mechanism for the Court might eventually evolve under article 104. However, the issue dealt with in paragraph 6, namely the voting rights of States parties in arrears in the payment of financial contributions, was unrelated to the one dealt with in paragraph 2 (d), and there was therefore no need to add any reference to article 104.

29. In reply to the question raised by the representative of the Syrian Arab Republic concerning paragraph 5, he said that the issue of the procedure to be followed in taking decisions on non-substantive matters had not been addressed. In response to the concerns expressed regarding the formulation of the third sentence of paragraph 5, he said that the two kinds of majority referred to should be seen as an integral whole, reflecting a compromise solution to the question of the required majority for voting. He suggested that the meaning of the text would perhaps be clarified if the words "except as otherwise provided in the Statute" were placed after the words "if consensus cannot be reached". It could be left to the Drafting Committee to clarify any remaining ambiguities.

30. **Ms. AGUIAR** (Dominican Republic), speaking as a member of the Drafting Committee, pointed out that it was not the task of that Committee to divine the intentions underlying the articles of the Statute, but rather to clarify the language in which they were expressed. That task was extremely difficult in the case of paragraph 5, which dealt with at least four separate concepts: voting rules, rules on decision-making, majorities, and quorums. A quorum was normally required for the holding of a meeting, not for proceeding to a vote. If that confusion could be clarified, the task of the Drafting Committee would be a great deal easier.

31. **The CHAIRMAN** proposed that paragraph 5 of article 102 should be left pending, and that the remainder of the article, as orally amended, should be referred to the Drafting Committee.

32. *It was so decided.*

Part 7 of the draft Statute

33. **Mr. FIFE** (Norway), Coordinator of the Working Group on Penalties, introducing the Group's report (A/CONF.183/C.1/WGP/L.14 and Corr.1), said that the Group was now in a position to transmit to the Committee for consideration article 75, paragraph 2; article 77, paragraphs 1 and 2; and article 79. A reference to an article 21 *bis* had been included in the text because, although some had felt that the principle of *nullum crimen sine lege* might usefully be considered in the Working Group, others had been of the view that that issue really belonged in Part 3 of the Statute. Two minor amendments should be made to the text of the report: it had been agreed in the informal consultations that the term "forfeiture" should be used in a consistent manner throughout the Statute, and not simply in Part 7, as erroneously stated in footnote 1; and in footnote 3 the word "possible" should read "impossible".

34. **The CHAIRMAN** said that, if he heard no objection, he would take it that the Committee agreed to refer the articles contained in the report of the Working Group, as orally amended, to the Drafting Committee.

35. *It was so decided.*

The meeting rose at 4.35 p.m.